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ABSTRACT

The comprehensiveness and specificity of the Education for All Handicapped Children Act (Public Law 94-142) and Section 504 of the Vocational Rehabilitation Act, and the detailed regulations that accompany them, might seem to foreclose any opportunity for states to develop and follow their own policies. However, reports from chief state school officers and their staffs reveal policy options open to the states in the areas of fiscal management, program planning and operation, and interorganizational relations. A range of alternative policy options in each of these areas is set forth in this document. The appendices contain a 15-item annotated bibliography of articles that deal with the policy issues related to the implementation and enforcement of P.L. 94-142 and Section 504, and a summary of these laws. (MLF)

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PUBLIC LAW 94-142

STATE EDUCATIONAL POLICY ISSUES IN THE EDUCATION OF THE HANDICAPPED

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EXECUTIVE SUMMARY

Public Law 94-142, and a closely related piece of legislation, Section 504 of the Vocational Rehabilitation Act, are the major legislative outcomes of a long struggle to improve the lot of the handicapped. They have been widely applauded as legislative landmarks signifying the national intent to end discriminatory treatment of the handicapped and to provide support for a free, appropriate public education for all handicapped youth. But they have also been criticized as too authoritarian and too restrictive, stifling any state level initiative.

The comprehensiveness and specificity of the acts, and the detailed regulations which accompany them, might seem to foreclose any opportunity for states to develop and follow their own policies. In actuality, reports from Chief State School Officers and their staffs reveal that there are many policy options open to the states in at least three arenas: fiscal management, program planning and operation, and interorganizational relations.

A range of alternative policy options in each of these areas is set forth in this document, drawing upon suggestions made by the states themselves. Insofar as election of a given option has foreseeable consequences, these are also presented.

The major focus of the document is on Public Law 94-142, because it is a more complex piece of legislation and has implicit in it a greater range of policy options than are to be found in "504." But the latter is also discussed, and policy options possible under it are set forth, because it has, potentially, even more far reaching effect on state education administration than does the more familiar P.L. 94-142.

FOREWORD

Purpose and Rationale

Chief State School Officers are directly involved in educational policy making, both as formulators of policy proposals for state board of education consideration and adoption, and as executive level decision makers. In both capacities, they have use for timely and accurate information about (a) the policy issues involved in a given educational problem and (b) the policy alternatives reasonably open to them. Clarification of issues and display of available options--not policy answers--therefore, is the fundamental purpose of this document.

As used here, "policy" means essentially direction--the way we intend to go. Policy, thus is distinguished on the one hand from broad--and in other contexts, very valuable--statements of belief (e.g., "We believe every child is entitled to a full and accessible educational opportunity") and on the other from strictly procedural statements (e.g., "Every handicapped child will be provided with an Individualized Educational Plan").

A policy statement on the same subject, as distinguished from the broad, general statement of belief or the more specific statement of operational procedure, might look something like this: "In the event that resources are diminished as the result of the passage of Proposition ___, special education programs will be exempted from any reduction in funding."

This document, then, in addressing policy issues and policy alternatives, seeks not to direct, but to provide a better sense of direction which may be taken, and to illuminate insofar as possible the foreseeable consequences of the choices made by the educational decision makers involved.

Target Audiences

Chief State School Officers, the primary target audience, share their decision-making responsibility with others and use the professional expertise or the lay viewpoint of others both to establish policy and to implement it. While the Chief State School Officers are the primary audience for this document, this shared responsibility broadens the potential audiences beyond just the Chiefs. State boards of education, state education agency staff, and planners and decision makers in the executive and legislative branches of government may find these analyses useful as Chiefs initiate the exploration of policy alternatives with these various groups.

I. INTRODUCTION

Background

The enactment of Public Law 94-142, providing for the free, appropriate public education in the least restrictive environment for all handicapped youth, represented the culmination of many years of thoughtful concern, concerted organizational effort, and legislative response to a rapidly expanding body of legal precedents.

Many persons had long been troubled by the failure of the American educational system to make adequate provision for the handicapped. This concern was forcefully articulated by the activities of many advocacy groups, and brought to a point requiring action by major court decisions. (See Bibliography, Appendix A.) Public Law 94-142, and a separate but related piece of legislation, Section 504 of the Vocational Rehabilitation Act*, have sharply focused SEA attention on the education of the handicapped.

P.L. 94-142, especially because of the comprehensive reach of the statute and its high degree of specificity, makes heavy demands upon state education agencies and assigns to them costly and time consuming responsibilities, many of which take the agency into uncharted territory, and some of which pose serious legal and operational problems.

Therefore, some SEAs and their primary executive staffs--the Chief State School Officers and their cabinets--have expressed interest in an analysis of the policy options they have available under the provisions of the handicapped legislation. The specific operating procedures for

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*"Section 504" is discussed in a later portion of this document (II-D, below).

carrying out the provisions of the law, of course, are of continual concern also, but it is the policy dimensions of P.L. 94-142 that are the focus of the present analysis.

Opportunity for State Education Policy Under P.L. 94-142

The high degree of specificity embodied in P.L. 94-142 and the accompanying regulations published in the Federal Register have led some SEAs to conclude that all significant state policy options have been foreclosed: if you want the money, you follow the law.

A minimal policy option elected in at least one state, therefore, has been simply to adopt verbatim the wording of P.L. 94-142, publishing it in toto as "state board policy." The consequence of following this policy option is to preclude the state's having any input into or effect on the operation of the federal law.

Another policy option, elected by several SEAs, is to adopt a general statement of belief in and support of the concepts of P.L. 94-142, leaving all interpretations of the law to the area of "operations" rather than "policy."

A third policy option, to be found in some states, is to consider P.L. 94-142 simply as a framework within which state policy must be formulated, but to take advantage of the leeway that is actually in the law to make the state's own determination of educational responsibility with respect to the handicapped, utilizing some of the policy options which are sketched out in the following sections of this paper.

A final possible policy response to the law's requirements (one elected so far in only one state, and now being questioned even there) is to decline to participate in the grants offered to those complying with the terms of the act.

Whatever choice is made, the states do indeed have policy options available to them. In fact, it may well be that the choices and actions of the states will be the ultimate determiners of nationwide policy for education of the handicapped. As two thoughtful analysts of P.L. 94-142 have recently observed, "Increasingly, state boards of education and state education agencies are sharing the lead in policy initiation." (Higgins & Barresi, Exceptional Children, January, 1979, Volume 45, Number 4, page 271.)

II. POLICY PROBLEMS AND POLICY OPTIONS

A. Fiscal Issues

State Funding Levels for Education of the Handicapped. Federal funding for education of the handicapped under P.L. 94-142 provides only a small part of the total monies required to assure "free, appropriate" public education for all handicapped children. The balance must necessarily come from state or local funds or--most commonly--a combination of the two. How this expense is divided is a matter for state policy determination.

The variety of policy options open is illustrated by variety of practices followed. States may elect to pay the full costs of education of the handicapped, thereby increasing state-level centralization, control, and monitoring functions, but almost surely decreasing the amount of state funding available for other education programs or for basic foundation support of local schools.

The state may reimburse local districts for "excess costs" only or subsidize district programs on a "weighted pupil" basis, thereby targeting available funds quite sharply--and consequently involving the state heavily in monitoring and auditing functions.

The state may elect to underwrite only a fixed percentage of the costs of handicapped education or to place a legislatively determined "cap" or "ceiling" on such expenses. In either case, state level responsibility for education of all handicapped children may not be met, and local fiscal burden is increased in proportion to the state's inability or unwillingness to assume a greater share of the burden.

Whatever policy is followed, it becomes apparent that the greater the state's contribution toward the cost, the more the state becomes immersed in actual program approval and even program operation.

State Funding Levels for Ancillary Services. Although P.L. 94-142 requires that states qualifying for funds under this legislation provide such related or "ancillary" services as the handicapped may require, state education agencies generally report that they have more leeway for policy formulation and interpretation in providing these services than they do in providing more basic education programs.

Thus, the state may fund--wholly or on a formula basis--such of these services as they may consider most essential until forced to expand their support as a result of federal fiscal pressure or court order in response to parental suits.

Admittedly, formulating educational policy in reponse to outside pressures is not the favored choice of SEAs, but in the real world of political pressure, legal requirements, and fiscal limitations, there may be no realistic alternative.

The SEAs, therefore, have the rather limited policy option of funding ancillary services for the handicapped to the extent that their professional judgment dictates and their resources permit, until constrained to do otherwise. Then, they have the policy option of (a) attempting to secure an increase in resources available, or failing in this, (b) cutting other programs.

Reduction of State Scope of All Educational Services. Imposition of statewide limits on governmental taxing or expenditures--"Proposition 13" laws--may force a state to make reductions in education budgets, and hence in education programs. Although court decisions in a good number

of states have required the legislature to fund a "thorough and efficient" school system (to quote, for illustration, the Cahill v. Robinson New Jersey case), no judicial decree yet has actually required a state to provide a specific level of quality of education.

However, several cases now pending in federal courts may result in a specific judicial declaration of what constitutes an acceptable quality of education for the handicapped. What the courts have said so far, in the opinion of many legal scholars, is simply that whatever a state does, it must do for all.

If this interpretation is substantially correct, there would appear to be no requirement that a state exempt handicapped education programs, including those partially supported by P.L. 94-142 funds, from overall state education budget reductions.

The policy option open to the states in such a circumstance would be that of determining what "appropriate" education the state can appropriately afford.

The policy option which would be, by law, foreclosed would be that of electing to apply the reduced expenditure limits to only one class of children--e.g., the handicapped.

Funding Summer Programs. The provisions of P.L. 94-142 are generally interpreted as requiring summer programs for the handicapped only if such programs are already available to other, non-handicapped, students. That is, the state can, under the law, properly make a determination as to what it considers "appropriate" education. That is clearly a policy determination. Once the decision is made to have such programs, however, it is not a permissible policy option to exclude from the benefits of the summer program any eligible handicapped child.

There is available the policy option of providing special summer programs for certain classes of handicapped children only--not for "regular" students--on the grounds that the special needs of these children require sequential, uninterrupted educational programming. Adoption of this policy option could be challenged by parents and others, however, as being a discriminatory action against the non-handicapped child.

"First Call" on Available Funds. Many thoughtful and persuasive advocates for the handicapped have asserted that programs for these students have a legally established first call on any available funds. This contention is based largely on the court's findings in the Mills case and similar decisions which appear to state that lack of money is no excuse, in the eyes of the law, for failing to provide for all of the needs of all handicapped children.

A close reading of these cases has convinced many authorities in education law that the courts have said only that lack of sufficient funds is no excuse for not giving the handicapped equal treatment. That is, if the funding authorities (local, state, or federal) do not provide sufficient funds for all programs, then available funds must be allocated to assure the handicapped of at least as proportionately fair a share as is allocated to the non-handicapped.

This area of confusion--even outright disagreement--calls for exercise of available policy options by SEAs.

One policy would be to give the handicapped, as a matter of principal if not of legal requirement, first call on educational funding without limit or restriction--to meet all of the identifiable needs of the identifiable handicapped, and then allocate the balance to the

non-handicapped. The predictable outcome of the adoption of this policy would be vigorous opposition--and very likely suits--from the parents of "normal" children.

Another policy might be to use the general concept of P.L. 94-142: on a priority basis to serve first the presently unserved, then those with the most severe handicaps, and then, equally, the other handicapped and all "normal" students.

A final policy would be that of simply allocating the money as far as it will go on a per pupil basis, with no priorities and no weighting for groups of children with special educational needs.

B. Program Issues

Programs for the Gifted. One of the anomalies of federal educational terminology is that gifted children are frequently included among those considered "handicapped." Anomaly or not, it is undoubtedly true that they are "exceptional," children with special learning needs.

Although the education of the gifted does not come specifically under the provisions of P.L. 94-142, in terms of needed and expected programs schools have much the same obligation to these children as they do toward those who fit the more conventional definitions of "handicapped." Therefore, SEAs report that there are policy issues with respect to education of the gifted that are similar to those encountered in dealing with other areas of exceptionality.

One major policy issue concerns the provision of special funding for gifted programs. Parents and other advocates for the gifted make a good case for the contention that an "appropriate" education for such children

can no more be offered without special efforts--for example, identification, placement, IEPs, resource teachers and resource centers for the gifted than for other exceptional children.

The basic policy option for SEAs (and for legislatures) is to determine whether to resond fiscally and programmatically to this appeal as a matter of educational equity, or to wait until compelled by court order or other irresistible pressure to provide special programs for the gifted equal to those provided for other "handicapped" children.

Another policy issue is whether to extend to the gifted all of the benefits provided for other exceptional children, including the expense, if necessary, of providing the cost of special schooling away from home.

The consequences of the adoption of such a policy would be, of course, to incur an obligation for relatively uncontrollable expense, an especially onerous burden in a time of limited or decreasing revenues.

IEPs for Every Child. A policy issue which some SEAs are beginning to face is that of providing an Individualized Education Plan for every child. The argument runs thus: if the handicapped child's needs can best be met by a careful assessment of his present status, a determination of realistic educational and developmental goals, and a detailed plan for meeting these goals (all of this accomplished through consultation by a team including teachers, specialist, parents, and often the child himself), why shouldn't every learner have the same treatment?

This argument being advanced by parents, child advocates, and a growing number of educators is reasonable and persuasive. It will doubtless be buttressed by the threat of legal suits if the demands it implies are not met, suits based on Fifth Amendment guarantees both of equal treatment and due process.

A policy determination that such wholesale provision for IEPs is not presently required by the law--which it indeed is not--and would be extremely time consuming and expensive--which surely it would be--is the decision which seems most likely to be adopted by SEAs. But the long-range consequences of such a policy would have to be weighed against such negative implications as these: (a) the education establishment could well be charged with failure to do what is best for children, and (b) the probability of successful legal action against the SEA (and the LEA) would be increased.

State Definition of "Learning Disabled." P.L. 94-142 requires that students with learning disabilities be considered as handicapped, but neither the legislation nor the regulations published in the Federal Register give absolute definition of "L.D." Illustrations and examples are given, and overall percentage limits of those who may be identified as "learning disabled" are specified, but not all state options in dealing with this issue are foreclosed.

For example, a state may, as a matter of policy, restrict by law or regulation the percentage of the school population which may be identified as "L.D." and hence subject to state program support or subsidy.

The state may choose to expand the illustrative definitions provided in the federal law and regulations to include other types of learning disabilities, if the state desires to expand the program opportunities and is willing to fund this expansion.

The consequences of such exercise of state options are quite clear: the narrower the definition and application of the L.D. concept, the less expensive and more precisely focused the program will be; but the risk of failure to provide needed programs will be increased and the likelihood of parental pressures or even court action will intensify.

Staff Development Programs. Although the state plan requirements of P.L. 94-142 expressly mandate the inclusion of systematic programs for staff development, the manner in which these requirements are met leaves room for considerable broad policy choice on the part of the SEA.

One policy option is to devise or amend certificaton requirements for all teachers and administrators to specify the infusion of training in the specifics covered by P.L. 94-142 (for example, least restrictive environment concept, IEPs, parent participation and due process) into existing preparation programs. By infusing the whole range of required courses with these concepts and by developing the needed competencies as part of overall professional training, education of the handicapped is saved from its usual curricular isolation.

Another policy option would be for the SEA to devise teacher/administrator certification requirements so that the desired training in the concepts of P.L. 94-142 would be added on as special courses rather than "infused" into the general professional requirements. Election of this option would give education of the handicapped a more prominent place in the professional curriculum and would be especially effective in programs of recertification for both teachers and administrators whose original preparation was deficient.

States might elect to adopt still another policy option--to divorce the staff development programs mandated by P.L. 94-142 entirely from state certification requirements and relegate the entire matter to local district planners, to be carried out as the LEA desires. This would be the least intrusive option, but would also be the most likely to result in highly variable levels of compliance.

C. Relationships with Federal, State, and Local Agencies

"Maintenance of Efforts" Requirements. P.L. 94-142 requires, as do almost all federal aid programs, that the federal monies be used to enrich or extend state programs, not to reduce state appropriations. These "maintenance of effort" and "supplement, not supplant" provisions are seen by many of the states as presenting an almost insoluble dilemma in a time of state fiscal retrenchment.

Unless there is some change in the law, some easing or modificaion of federal restrictions, policy options for the states are limited.

The most obvious option is simply to take whatever limited (or even decreasing) resources which may be available and apply them to those areas which come under the "maintenance of effort" structures, even through this means a diminishing of support for other worthy programs.

Another option would be to place greater requirements for local support of education of the handicapped on the local districts, forcing them to make the necessary cuts in other programs with the attendant risk of creating animosity among the general public who want their own favored programs to continue to have full support.

A long-range option would be to attempt to secure Congressional recognition of the untenable position in which states may find themselves as a result of the Proposition 13 movement, petitioning Congress to make the necessary changes in the statutory language to give recognition to the new financial exigency facing many of the states.

Conflicts Between P.L. 94-142 and State Law. SEAs report a number of conflicts between what P.L. 94-142 requires and what state law permits. (See Compact, Fall 1977.) Some of these conflicts are merely abrasive or annoying; others raise fundamental legal or constitutional issues at the state level.

Among the conflict areas are these:

--Assignment of responsibility to the SEA for handicapped children already under the jurisdiction of another state agency (see next section)

--The legal status of hearing officers

--The legal status of "surrogate parents"

--The specified age range for mandated education

--Prescribed relationships, regulatory and financial, between the SEA and non-public schools which conflict with state constitutions, state statutes, or Attorney General opinions

The above list, illustrative but not exhaustive, gives some indication of the scope and severity of the policy problems faced by SEAs in maintaining an accommodation between what the Feds require and what the states permit. Caught in such a squeeze, SEAs have limited, but nevertheless real, policy options open to them.

One option is simply to comply with the federal regulations in toto until forced by state action (legislative, executive, or judicial) to do otherwise. At that point, the responsibility shifts from the SEA to someone else--it becomes their problem.

Another policy option is to comply gradually with the federal requirements, at the same time seeking appropriate state action to resolve the dilemma. It may be reasonable to assume that even partial compliance, coupled with efforts to get the state law changed, will at least delay punitive federal reaction.

Still another policy option is to rely on the wording found in some--but not all--of the sections of P.L. 94-142 which exempts states from some of the requirements of the federal law if compliance would be contrary to state law. To maintain that the Congressional intent--expressed in some sections of P.L. 94-142 if not in others--was clearly not to ride rough-shod over state law makes a reasonably compelling argument.

A final long-range policy option for the SEA is to work with the other states through the usual political processes to amend P.L. 94-142, an action which has been successfully accomplished in the past with other federal legislation.

SEA Relationships with Other State Agencies. P.L. 94-142 assigns to the SEA complete responsibility for the education of all handicapped children, including not only those in the public and private schools, but also those in state institutitions and those under the statutory jurisdiction of other state agencies. In some cases, SEAs already have all or part of this jurisdictional authority; in many others, however, the stipulations of P.L. 94-142 require new, sometimes almost competitive interagency relationships.

One policy option open to SEAs is simply to accept the requirements of P.L. 94-142 as binding, and proceed to exert the full authority of the law as it applies. Conflicts with other agencies are almost sure to arise, leading to appeals to the state Attorney General's Office or to the courts for adjudication.

Another choice might be to adopt a policy of cooperation and gradual accommodiation, adapting existing state policy and liberally interpreting both state and federal law during the transition to full exercise of SEA authority. The likelihood of serious challenge or specific court intervention under such a policy of gradual accommodation appears to be remote.

A third policy option would be to seek legislative action to enact or amend state statues regarding the allocation of agency responsibilitiy for handicapped children to bring state law into complete conformity with the federal law. Such a frontal attack on the problem, in the opinion of some SEAs, would bring the state and federal laws into conformity at the very considerable risk of destroying existing productive state interagency cooperation, thus working to the ultimate disadvantage of handicapped children.

Whatever specific policy is adopted for the joint administration of the provisions of P.L. 94-142 with other agencies, SEAs have almost universally reported that friction is reduced to a minimum if written, formal agreements are entered into. Such "memoranda of understanding" as have been established at the federal level between the U. S. Office of Education and the U. S. Rehabilitation Services for carrying out

interagency concerns for the physically handicapped, or between OE and the Department of Labor for working together on youth employment programs, provide good models for state interagency use.

Decentralization of Planning and Control to SEA's. As the tax/spending limitation movement brings to SEA's a limitation of fiscal resources and possibly a reduction in personnnel, crucial policy decisions will have to be made regarding the division of labor in carrying out the provisions of P.L. 94-142. The dilemma is this: the SEA has the ultimate responsibility, but it may not have the resources to get the job done.

One apparently tenable policy option is to divert other SEA resources to education of the handicapped. This would require, of course, a readjustment--even a distorting--of established educational priorities, with the concomitant risk of alienating other special interest groups and/or the general supporters of education.

Another policy option would be to shift all but the broadest of the planning functions to the LEAs, letting them do all of the detailed program planning for handicapped education. Unevenness of planning, or even no effective planning at all, might be an expected result of this policy.

Still another policy option would be to devote SEA resources almost entirely to planning and technical assistance, attempting to provide only very limited supervision to field operations.

Still another policy option could be that of restricting SEA field activity in conjuction with P. L. 94-142 to monitoring and auditing functions, with the result that the SEA would regress toward its historical function of being primarily a regulatory agency.

One final policy alternative, suggested (but probably not practiced) by several SEAs, would be to declare the entire area of handicapped education a matter for "local control," effectively relieving the SEA of any involvement other than that minimally necessary to comply with the law--ultimately, an abdication rather than a delegation of state responsibility.

Assuring Local District Compliance. An essential provision of the "state plan" required under P.L. 94-142 is that a local district will submit and follow a local plan consistent with that approved by the U.S. Office of Education for the state as a whole.

Assuring local compliance involves a number of policy issues for the SEA. One state has reported the adoption of a policy which simply affirms that compliance with the state plan is a matter for "local control." This policy may serve effectively to absolve the state of any direct responsibility, but may not, in fact, prevent an OE determination of local noncompliance, thus jeopardizing other (or all) state HEW funds.

Another policy option would be for the SEA to increase its monitoring and auditing oversight of local programs. Such a policy would probably give the tightest control and therefore the best assurance of compliance, but might run counter to the SEA desire to emphasize leadership and service rather than regulatory functions. It would also be difficult to implement (or continue if already implemented) in the face of pressures to reduce staff coming as part of the general Proposition 13 syndrome.

Still another policy option might be to require frequent and tightly worded assurances of compliance from the local district, coupled with occasional spot checking. This policy option is most congruent with the

SEA's often expressed desire for a pattern of state relationships with the OE which relies on the submission of state assurances rather than detailed federal supervision.

D. Section 504, Vocational Rehabilitation Act

(Although the primary focus of this policy analysis document is upon P.L. 94-142 and the education policy options open to state education leadership under this law, the close an often complex relationship between this and a separate law--Section 504 of the Vocational Rehabilitation Act--requires some consideration also of the latter.)

Distinguishing Between P.L. 94-142 and Section 504, Vocational Rehabilitation Act. Because of popular confusion (evidenced also by some education professionals) between two federal laws dealing with the handicapped, a clear distinction should be made between the two as antecedent to policy formulations under either one.

Public Law 94-142, the "Education of All Handicapped" act, is an authorization bill providing the statutory basis for the appropriation of federal funds to SEA's, and through them, to local school districts that wish to apply for and receive these funds. To be eligible for this money, certain conditions must be met, most notably the submission of a state plan which contains certain features.

All of the requirements of P.L. 94-142 are contained in the "state plan" section and in those stipulations requiring local district conformity with the provisions of the state plan. If a state declines to apply for the money, and thus does not file a state plan, P.L. 94-142 requires nothing of the state or its local districts.

Therefore, P.L. 94-142 is not, as has been rhetorically claimed, a "civil rights act for the handicapped." It does not have the force and authority of a civil rights bill; it authorizes the appropriation ... allocation of money for those jurisdictions which elect to meet the stipulated requirements.

Section 504 of the Vocational Rehabilitation Act, however, is a true civil rights bill. It requires--in much the same sort of declarative statutory language as Title VI of the Civil Rights Act or Title IX of the Higher Education Amendments--that certain things be done (and/or not done) to assure that the rights of the physically handicappped are protected.

The requirements of Section 504 cannot be escaped by the simple expedient of not applying for the federal money--there isn't any offered! Instead, as a penalty for noncompliance, other HEW funds may be withheld. (It's the familiar governmental carrot and stick arrangement, without the carrot!)

Assuring Program Availability Under Section 504. Because of a frequent misunderstanding of the actual provisions of Section 504, many educators have feared--and some parents have believed--that every classroom and every activity in each school building must be so arranged as to make it accessible to physically handicapped persons.

Since Section 504 actually requires only that each program to be accessible, clearing up this confusion would seem to require a clear SEA policy statement which articulates the actual requirements.

One policy option would be to specify by appropriate definitional and regulatory language what constitutes each program required to be made accessible. That is, the state could spell out in detail the specific key elements of each program to which the handicapped must have

unabridged access--for example, the language arts or physical education programs at the elementary level, or the vocational education offerings at the secondary level. Further, the SEA could define what is required not only for physical accessiblity in terms of removal of physical barriers, but also what "access" to the programs must be provided by way of, say, readers for the blind or captions for the deaf. While many states might consider such specificity to be over detailed and restrictive, clarification of a murky issue would also result.

As an alternative, the SEA could simply affirm its commitment to assuring conformity to the federal requirements, but leave specific program determination to local districts.

Once the definitional problem is clarified, however, the real crunch is financial. What is it going to cost and who is going to pay?

The preferred policy in most SEAs would appear to be full state assumption of these externally imposed costs, most especially for the removal of physical barriers. Political and fiscal realities, however, would very likely require that the SEA support a policy of state-shared costs. The policy option with the least support at state or local levels is one which would make compliance mandatory but leave the cost problem to "local control."

Possibility of Loss of All HEW Funds. State education agencies have expressed very grave concern over the provision in Section 504 which is interpreted as threatening the state's loss of all HEW funds if the state or any local district is found to be in noncompliance with any of the provisins of the act.

Since Section 504 is linked by reference to P.L. 94-142, any violation of the requirements of the latter would also seem to carry with it the possible loss of HEW funds. This would be true even though the state might have elected not to file a state plan making it eligible for P.L. 94-142 funds.

This interrelationship between the two laws, and the possible threat it entails to funds which have no relationship to either law, raises several policy issues for the SEAs.

First, if the state should decide that the P.L. 94-142 requirements are so burdensome that it does not wish to participate in the program, the almost parallel requirements of Section 504, with its attendant potential penalties, would still be in force. Thus, to decline to accept P.L. 94-142 fund would not relieve the state of any of the burdens of Section 504.

Moreover, if the state should elect the (somewhat legally dubious) policy option of leaving the compliance with either of these laws to "local control," any noncompliance on the part of even a single local district would jeopardize all HEW funds for the entire state.

Finally, if the state should choose to concentrate its efforts and fiscal support solely on the most obvious requirements of Section 504, the removal of physical barriers, and negelect or leave to local initiative the enforcement of the other sections of the law, liability for local district defects in any part of the compliance would still rest with the state--and the penalties would be imposed statewide.

CONCLUSION

As present SEA practice is reported and proposed action is projected by the states, there emerges little disagreement with the basic intent of either P.L. 94-142 or Section 504 of the Vocational Rehabilitation Act. The problems reported range from broad philosphical issues of the appropriate level of control of the program to very specific issues of program operation and finance. Because these are unsolved problems, they are also potential policy issues.

State education agencies and their adminstrative leadership have suggested the policy options reported in this document and many states have already made the policy choices. Further experiences with the federal legislation--perhaps its refinement and/or alteration--and a longer period of time for the states to assess the results of the policy option chosen will doubtless demand the development of new policy analyses.

Two major findings have emerged from this brief analysis of state policy options with respect to education of the handicapped. First, the specificity of the federal legislation may have limited but has not by any means foreclosed the policy options open to the state. Second--but not of secondary importance--is the growing realization that no state can escape its obligations by foregoing participation in P.L. 94-142: the requirements of Section 504 will still be in force.

Appendix A

Annotated Bibliography

INTRODUCTION

A great deal has been written about Public Law 94-142 and Section 504 of the Vocational Rehabilitation Act. To list all these materials in this bibliography would not only prove to be a nearly impossible task, but would probably make this bibliography useless to the Chief State School Officers. Instead, this bibliography has been limited to articles that deal with the policy issues related to the implementation and enforcement of P.L. 94-142 and Section 504.

Articles and papers on the policy implications of these two important pieces of legislation are much more scarce, yet at the same time will probably be more useful to the paper's intended audience. Two guidelines were used in selecting materials for this bibliography. First documents selected describe policy alternatives as they relate to the implementation of P.L. 94-142 and Section 504 in general.

Secondly, the documents listed in the bibliography can be found in publications that are readily available to the Chief State School Officers and their staffs. The resources listed here should help the Chiefs and their staffs develop policy options which in turn will lead them to the additional documents needed for further study.

Barbacovi, Don R. and Clelland, Richard W. Public Law 94-142: Special Education in Transition. American Association of School Administrators, Arlington, Virginia (no date).

This pamphlet was produced by AASA to achieve four goals: (1) to inform public school administrators of the statutory and regulatory requirements of P.L. 94-142, (2) to identify critical issues and delineate possible problem areas relative to P.L. 94-142, (3) to describe the effect that P.L. 94-142 could have on organizational structure and operations of schools, and (4) to examine the effect that P.L. 94-142 could have on administrative decision making concerning the assessment and evaluation of criteria for program effectiveness and efficiency.

The following topics are covered in the pamphlet:

- An introduction to P.L. 94-142, with a description of the historical development of federal legislation regarding education of handicapped children, and the legislative intent of the act
- A description of the statutory and regulatory requirements for local education agency applications for federal funds stemming from P.L. 94-142
- A description of the meaning of "least restrictive environment," including the constitutional principle of the least restrictive alternative doctrine and the application of the least restrictive alternative doctrine to the delivery of special education services
- A description of the procedural due process requirements
- A discussion of the impact of IEPs upon the identification, assessment, placement, instruction and evaluation process for the delivery of special education services
- A discussion of personnel development problems associated with P.L. 94-142
- A look at possible future trends in the delivery of educational services to the handicapped

Boston, Bruce O. Education Policy and the Education for All Handicapped Children Act (P.L. 94-142). The Institute of Educational Leadership, George Washington University, 1977.

This pamphlet is a report of thirteen regioal conferences held throughout the United States between January and April 1977. The purposes of these conferences was to bring together individuals responsible for special education programs from each of the states. At these conferences, participants discussed the issues and problems related to the implementation of P.L. 94-142. The following topics are covered in detail in the report:

- The role of the SEA in enforcing P.L. 94-142, including potential barriers to implementation that exist in state laws
- Funding, including the problem of start-up funds, the federal funding formula, and the minimum provisions which effectively eliminated many school districts from receiving federal assistance because they didn't have enough handicapped children to qualify for federal funds
- Problems in the regulations regarding IEPs
- Due process and procedural safeguards

In addition, the following topics are covered in less detail:

Private schools
General compliance
Timetables for implementation
The "unable or unwilling LEA"
Related services, screening, identification, evaluation
Child count
Personnel development
Learning disabilities
Regulations
The advisory panel
Destruction of records
Evaluation by the Commissioner of Education

Finally, the pamphlet provides an extensive list of resources on special education, including documents on special education and agencies involved with special education.

Brown, Dennise. "Wider Doors for Handicapped Children: Section 504, Part C." OSSC Bulletin. Oregon School Study Council, Volume 22, Number 3, November 1978, 35 pages.

This issue of the OSSC Bulletin is devoted to a discussion of Section 504, Part C of the Vocational Rehabilitation Act of 1973. It provides a brief history of Section 504 and a detailed description of the requirements of the section as it affects school buildings. It discusses situations where new construction is not required and situations where new construction would be required. The Bulletin also contains a copy of the regulations issued by HEW for Section 504, Part C, and includes a checklist for building administrators to use in determining whether or not their building meets the requirements of a "barrier free" environment.

Clelland, Richard. Section 504: Civil Rights for the Handicapped. American Association of School Administrators, Arlington, Virginia, 1978, 128 pages.

This book provides a concise description of Section 504. It discusses the history of Section 504, provides an overview of the requirements of Section 504, and describes the important issues addressed by the regulation.

The second chapter emphasizes the employment practice effects of Section 504, while the third chapter devotes attention to the portion of Section 504 dealing with program accessibility.

The fourth chapter of this book provides a comparison between Section 504 and P.L. 94-142. It points out that P.L. 94-142 is not a Civil Rights law because states electing not to apply for federal funding are not required to meet the requirements of the law. On the other hand, Section 504 is a Civil Rights law because whether or not a state elects to receive federal funds, it must meet the requirements of the Regulation. The chapter goes on to describe the substantive and procedural similarities and differences of P.L. 94-142 and Section 504.

Finally, chapter five describes possible future trends in employment practices, program accessibility and the delivery of educational services to both handicapped and nonhandicapped individuals.

Cohen, Shirley, Semmes, Marilyn and Guralnick, Michael J. "Public Law 94-142 and the Education of Preschool Handicapped Children." Exceptional Children, Volume 45, Number 4, January 1979, pages. 279-285.

This article discusses the impact of P.L. 94-142 on the education of handicapped chidren between the ages of zero and five. It discusses the fact that P.L. 94-142 requires the education of these children only if the requirements of the law are not in conflict with state law or practice. The article discusses various situations where services for handicapped preschool children must be provided and when they are not required to be provided. The Preschool Incentive Grant Program is also discussed. This program provides additional funds to states that do provide services to preschool children. The program's intent is to recognize the importance and cost effectiveness of early intervention with handicapped children.

A table shows which states currently require that services be provided to children under the age of six. The article points out that only thirteen states currently mandate the provision of full educational programming for handicapped children in the three-to five-year-old age range, and not all of those thirteen are actually serving all of the handicapped children in this age category.

Another concern of this article is the least restrictive environment requirement of P.L. 94-142 and how that can be met with existing programs for preschool children. There is a discussion of how many Head Start programs have begun providing services for these children. The article discusses the dangers involved in trying to identify handicapped children at an early age, and the dangers of assigning children to self-contained special education programs and forcing the children to carry those disability assignations throughout their education. Finally, the article points out that the public schools may not be the best vehicle for providing special education services to handicapped children below school age.

Higgins, Scottie and Barresi, Josephine. "The Changing Focus of Public Policy." Exceptional Children, Volume 45, Number 4, January 1979, pages 270-277.

This article discusses how educational policy at the state and local levels has changed since the passage of P.L. 94-142. It points out that there has been a great deal of "catch-up" activity devoted to storing up or modernizing policies as they relate to special education at the state level. Some of this policy development has taken a unique approach, such as the extension of the right to an education for handicapped children by lowering participation ages from six to five through a program plan submitted to USOE from the state of Georgia. Another unique policy was the Texas State Board of Education's order that existing teacher education programs be infused with special education skills. This approach differs from the general approach of adding on additional requirements for teacher certification as found in Georgia, Colorado, West Virginia and Oklahoma. In addition, the article points out that the focus of policy development is shifting from the federal level to the state and local levels.

The article identifies three types of policies that are being developed in response to the requirements of P.L. 94-142.

Type I policies are those representing the broadest base of principle and philosophy from which all programs, services and practices emanate. These types of policies have been used to expand educational rights and protections to new populations such as the gifted and talented, preschool children, and post-secondary education.

Type II policies are those relating to the distribution of time, fiscal, human and material resources. These policies include those regarding funding and appropriations, intergovernmental responsibilities, organizational change, use of facilities, and personnel development.

Type III policies govern the precise manner in which policy becomes practice. This type of policy tends to be administrative guidelines and official or unofficial, but recognized, operating procedures.

Kotkin, Lawrence and Eager, Mary B. Due Process in Special Education: A Legal Analysis. Research Institute for Educational Problems, Cambridge, Massachusetts, February 1977, 185 pages.

This book is a collection of two papers dealing with the topic of due process as it related to special education. The first paper titled, "Due Process in Special Education: Legal Perspectives," describes the application of the Due Process clause of the Fourteenth Amendment to the U.S. Constitution. It discusses the general meaning of due process and the evolution of the application of due process to special education. This includes a review of the development due process procedures in federal courts, Congress, State Legislatures, and State Agencies such as Departments of Education. Finally, this paper deals with state responses to federal Judical and Legislative requirements in the area of due process in special education.

The second paper, "Due Process in Special Education: Legal Perspectives-The State of the States, P.L. 94-142 and Systems Design," is a discussion of the due process provisions which the states have incorporated into their special education systems and a discussion of the due process requirements of P.L. 94-142. The paper compares the due process requirements of the states, analyzing and comparing the formal and informal due process requirements. The paper then discusses the state responses to the due process requirements of P.L. 94-142 and provides a commentary on whether or not those requirements appear to have been satisfied by most of the states. It should be noted that this is based upon state requirements as they existed in the spring of 1976 and consequently may be outdated at the present time.

The final section of this paper examines issues involved in designing a due process system. The discussion is aimed at aiding states in the design of special education due process systems which are both fair and educationally sound. Among the issues discussed are:

- The involvement of the child and its implications
- Parent involvement and what this means
- The impartial due process hearing and how this is organized
- The mediation approach as a more informal alternative or additional model

Savage, David G. Educating All the Handicapped: What the Law Says and What the Schools Are Doing. National School Public Relations Association, Arlington, Virginia, 1977, 97 pages.

This book attempts to describe the reactions of local and state school administrators, supervisors and classroom teachers to P.L. 94-142. The first chapter details the content of P.L. 94-142 and provides comments from lawmakers and educators, with a question and answer format about P.L. 94-142 and Section 504. The book provides an historical account of court cases involving educational rights for the handicapped, and continues by discussing each of the following topics:

- The role of state and local education agencies
- Early intervention
- The development of individualized programs
- Mainstreaming
- Interpretation of learning disabilities
- Teacher training
- Working with parents
- Architectural modifications in school facilities

Schipper, William V. and Kenowitz, Leonard A. Special Education Futures: A Forecast of Events Affecting the Education of Exceptional Children: 1975 -2000. National Association of State Directors of Special Education, February 1975.

This paper, funded by the United States Office of Education, is a futuristic study of special education utilizing the Delphi methodology. To do this, a list of 60 hypothetical future events in special education were circulated to 121 special education administrators consisting of representatives from the following groups: Chief State School Officers, State Directors of Special Education, SEA Staff in Special Education Units, Large City Special Education Directors and National/Regional Special Education Administrators. Each was presented with this list of 60 events and asked to predict the year the event would occur, and to record the value they attached to the event on the basis of a scale from +5 to -5, with +5 being highly valued and -5 negatively valued. A series of tables in the back of the report lists the 60 events on the basis of their value to the respondents and in the order of their predicted occurance.

Among the more important predictions to come out of this document is the prediction that all exceptional children will be receiving educational services, due process procedures will be guaranteed, and uniformity of educational opportunity will transcend state and district boundaries between 1980 and 1985. A number of changes were also predicted in the administration of special education as well as the requirements for receiving a teaching certificate.

More information about the National Association of State Directors of Special Education can be obtained by contacting:

James R. Galloway, President
1201 16th Street N.W.
Suite 601E
Washington, D.C. 20036
(202) 833-4193

Torres, Scottie. Special Education Administrative Policies Manual. Council for Exceptional Children, Reston, Virginia, September 1977.

This manual was developed by the Council for Exceptional Children to aid state and local education agencies in the development of written policy consistent with recent federal legislation, particularly P.L. 94-142. Policy areas covered include:

- Right to education
- Population identification
- Evaluations
- Placements
- Service delivery
- Facilities and transportation
- Administration
- Personnel
- Fiscal management
- Forms

This manual was developed by field testing a policy questionnaire to 40 LEAs and over 150 school administrators. Each section contains coded policy statements with comments and cross-references to related policies and policy areas.

Change in Education: Three Policy Papers on the Implementation of the "Education for All Handicapped Children Act", P.L. 94.142.
Educational Testing Service, Washington, D.C., February 1976, 43 pages

This is a set of three policy papers intended to aid the implementation of the Education for all Handicapped Children Act, P.L. 94-142. The first paper, "Identification of All Handicapped Children," discusses the need for a comprehensive program of identification of handicapped chidren. Topics covered include definitions of handicapped, responsibilities for identifying the children, agreement on type of federal regulations, and identificaton procedures.

The second paper, "Individualized Education Programs," focuses on the content, implementation and monitoring of IEPs. The third and final paper, "Financing of Educational Services for the Handicapped," analyzes the law's major funding provisions and reviews the following policy issues:

- Inadequate resources
- Excess costs
- Erosion of services
- State description
- Local education agencies' eligibility
- The itneraction of federal and state programs.

Clarification of P.L. 94-142 for the Classroom Teaaher. Research for Better Schools, Philadelphia, Pennsylvania, January 1978.

Although directed primarily toward the classroom teacher, this book provides a number of useful insights into the implementation of P.L. 94-142. It discuss in detail how the requirements of P.L. 94-142 and Section 504 will affect teachers and provides resources to enable the classroom teacaher to prepare for this situation.

Journal of Teacher Education. American Association of Colleges for Teacher Education, Washington, D.C., Volume XXIX, Number 6, November/December 1978.

"Educating Handicapped Prersons" is the theme of this issue of the Journal. The individual chapters in this magazine discuss many of the important aspects related to the implementation of P.L. 94-142, particularly as they relate to teachers and teacher training. Chapter titles include the following:

"Political and Moral Contexts that Produced P.L. 94-142"

"Personal Perspectives on Educating Handicapped Children"

"Mainstreaming That Works in Elementary and Secondary Schools"

"Adapting Teacher Education to Include Mainstreaming: Deans' Grant Projects"

"Basic Issues in Restructuring Teacher Education"

"Individual Competencies Needed to Implement P.L. 94-142"

"Bureaucracy or Professionalism: Implications of P.L. 94-142 for Teacher Education"

"Unresolved Issues for Teacher Educators"

"Preservice Programs Deficient in Special Education Courses"

"Beyond the Mandate: The Professional Imperative"

"State Certification Requirements"

Because of the recent publication date, many of the articles contain useful information on these topics based on actual experiences in meeting the requirements of P.L. 94-142.

"Mainstreaming: Part 2" Children in Contemporary Society, Volume 11, Number 3, March 1978, pages 72-94.

This document deals with the topic of mainstreaming or the least restrictive environment. It contains nine articles on the following topics: the administrator's role, legal issues involved in the least restrictive environment, specification of P.L. 94-142, parents and teachers' views regarding mainstreaming, a summary of recent research, and a description of six new children's books on the topic of handicapped children.

Viewpoints: Bulletin of the School of Education, Indiana University. School of Education, Indiana University, Bloomington, Indiana, Volume 53, Number 2, March 1977.

This issue of Viewpoints is devoted entirely to the issues and implications of P.L. 94-142. The first chapter discusses the national perspectives and long-range implications of P. L. 94-142. Among the implications discussed in this chapter are: the U.S. government has a legitimate right to enact laws which affect the operation of public education in the United States, Congress will be more aggressive in passing educational legislation which facilitates compliance by the schools, and the notion of "equal opportunity" is continually changing. In addition, the following topics are discussed in other chapters of this issue:

- Due process and least restrictive alternatives
- Implicatons of the IEP
- Nondiscriminatory testing provision of P.L. 94-142
- The challenge for state and local administrators
- Training of educational personnel under P.L. 94-142
- The implications of mainstreaming handicapped children in physical education programs

Appendix B

Key Features of P.L. 94-142

KEY FEATURES OF P.L. 94-142

The following summary of the highlights of P.L. 94-142 was prepared by staff members of the Northwest Regional Educational Laboratory.

Statement of Findings and Purpose

Sec. 3 The Congress finds that--

1. There are more than eight million handicapped children in the U.S.
2. The special educational needs of such children are not being fully met
3. More than half the handicapped children do not receive appropriate educational services which would enable them to have full equality of opportunity
4. One million are excluded entirely from the public school system and will not go through the educational process with their peers
5. Many are prevented from having a successful educational experience because their handicaps are undetected
6. Families are often forced to find services outside schools because of a lack of adequate services
7. State and local educational agencies have a responsibility to provide education for all handicapped, but present financial resources are inadequate

Definitions

Sec. 4 The term "special education" means specially designed instruction, at no cost to parents, to meet unique needs, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

The term "related services" means transportation, such supportive services as speech pathology, recreation, medical, etc., for diagnostic and evaluation only, and early identification and assessment.

The term "free appropriate public education" means special education and related services which:

a. Have been provided at public expense
b. Meet the standards of the State education agency

c. Include appropriate preschool, elementary and secondary education
d. Are provided in conformity with the Individualized Education Program

The term "Individualized Education Program" means a written statement for each child developed in a meeting by a representative of the local district or intermediate unit who is qualified to provide instruction to meet the unique needs of handicappped children, a teacher, the parents, and when approporiate, the child. The statement shall include:

a. Statement of present levels of performance by the child
b. Statement of annual goals, including short term instructional objectives
c. Statement of specific educational services to be provided
d. Projected date for initiation and duration of services
e. Objective criteria and evaluation procedures on at least an annual basis

Entitlements and Allocations

Sec. 611 The maximum amount of the grant to a State is equal to:

1. The number of handicapped children aged 3-21 receiving services multiplied by the overage per pupil expenditure in the U.S. in the following percentages:

5 percent for the fiscal year ending September 30, 1978
10 percent, 1979
20 percent, 1980
30 percent, 1981
40 percent, 1982

The Commissioner of Education cannot count handicapped children greater than 12 percent of all children aged 5-17 in the State.

Funds received by the State for the year ending September 1978:

50 percent for State services
50 percent distributed to local districts

Funds received for the year ending September 1979:

25 percent for State services
75 percent distributed to local districts

Maximum of state administrative costs is the smaller of 5 percent or $200,000.

Eligibility

Sec. 612 To qualify for assistance:

1. The State must have in effect a policy that assures all handicapped children the right to a free appropriate public education

2. The State has developed a plan that assures--

   a. There is a goal, timetable and description of facilities, personnel and services
   b. Services will be available to children ages 3-18 by September 1978 and ages 3-21 by September 1980
   c. All children will be identified, located and evaluated

3. Each local district will maintain records of the individualized education program for each child

4. Procedural safeguards, including assurance that testing and evaluation is fair

Application

Sec. 614 A local district or intermediate unit desiring payments must submit an application to the State, assuring--

1. All children in the district will be identified, located, evaluated, served

2. Fair policies and procedures

3. Full educational opportunity including parent participation

4. Timetables

5. Description of facilities, personnel and services

Procedural Safeguards

Sec. 615 Parents must be guaranteed procedural safeguards including:

1. Opportunity to examine all relevant records of identification, evaluation, educational placement

2. Written prior notice of changes in identification, evaluation or placement

3. Notices must be in the parents' native language

4. When there is a complaint, parents shall have an opportunity for an impartial due process hearing, and may appeal the local hearing to the State, and to State or Federal Court. Any party to a hearing is entitled to:

   a. Be accompanied and advised by counsel or individuals with special knowledge
   b. Present evidence and confront, cross examine and compel attendance of witnesses
   c. Written or electronic verbatim record
   d. Written findings of fact and decisions

During the pendency of any proceedings, the child shall remain in the current educational placement.

The Commissioner of Education can withhold funds for failure to comply.

Administration

Sec. 617 The Office of Education will:

1. Provide technical assistance to States

2. Provide short term training and institutes

Appendix C

Highlights of Section 504

HIGHLIGHTS OF SECTION 504

The following summary of the Section 504 of the Vocational Rehabiltation Act of 1973 was taken from the OSSC Bulletin "Wider Doors for Handicapped Children: Section 504, Part C," November 1978, p. 3.

Section 504

No otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.